IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 31 OF 2021

Santosh Subhash Mishra,
Age : 51 years, Occu. : Agri.,
R/o. Rajput Galli, Paranda,
Dist. Osmanabad. ... Applicant
(Orig. Complainant)

Versus

1. Ibrahim Abubkar Shaikh,
Age : 51 years, Occu. : Business,

2. Rehana Ibrahim Shaikh,
Age : 46 years, Occu. : Household,
All the respondents are resident of
Village Kavte-Mahakal, Tq. Kavte-Mahakal,
Dist. Sangli. ... Respondents
(Orig. Accused)

...

Mr. Shambhuraje V. Deshmukh, Advocate for Applicant.
Mr. P. S. Paranjape, Advocate for Respondent Nos.1 and 2.

...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 08 MARCH 2024
PRONOUNCED ON : 13 MARCH 2024

ORDER :

1. Original complainant, who had instituted proceedings under section 138 of Negotiable Instruments Act, 1881, is aggrieved by the judgment and order passed by learned Judicial Magistrate First Class, Paranda, Dist. Osmanabad dated 03.09.2021, acquitting the accused from the offence punishable under section 138 of N.I. Act.

2. Learned counsel for applicant would submit that, complainant and accused being friends, Rs.10,00,000/- were invested by complainant on the request of accused. Accused had assured to repay the amount within two months. However, only on persistent demand, cheque was issued, but it was dishonoured and therefore proceedings were instituted. Learned counsel pointed out that in support of his case complainant had adduced himself and has placed necessary documents like cheque in question, bank memo, legal notice and has also adduced evidence of his own brother-in-law through whom complainant got acquainted with accused. However, such evidence has not been correctly appreciated by learned trial Judge and moreover, learned trial Judge has dismissed the complaint on the sole ground that complainant had no financial capacity to extend such loan. He pointed out that mere defence taken by accused was that cheque was issued by way of security. Therefore, it was not a case of the acquittal. Learned trial court having erred in acquitting accused, said judgment is sought to be challenged and hence he seeks leave.

3. In answer to above, learned counsel for respondents accused would point out that, complainant had miserably failed to make out any case either of alleged transaction of extension of loan of huge amount. There was no concrete foundation in support of

complaint. Moreover, considering the occupation and status of complainant, it was doubtful whether such huge amount could be given on mere demand and that too for investment without giving proper sources of income. Therefore, learned trial court has rightly doubted and has discarded all averments of complaint and thereby acquitted the accused. No fault can be found in the said appreciation and hence, he prays to refuse the leave.

4. Heard both sides. It seems that, proceedings under section 138 of N.I. Act were instituted by complainant by setting up a case that he and accused are friends. Complainant runs a hotel and he has landed properties. Through brother-in-law namely Tiwari, complainant got to know accused, who is Chairman of Malatitai Vasantdada Patil Nagari Patsanstha. According to complainant, accused suggested complainant to invest Rs.10,00,000/-in the said Patsanstha for a period of six months. Complainant himself in the complaint has stated that he accepted the offer and even invested, but he did not obtain any receipt towards said deposit.

5. As the complainant repeatedly demanded the money, at that time cheque was issued, but it was dishonoured with a reason “funds insufficient”, and therefore, the proceedings were instituted. Defence taken by accused is that there was no

transaction between complainant and accused. There was only financial dealing with Tiwari. Accused had issued blank cheque to Tiwari and the same has been misused. From the cross of Raghuveer (CW2), who is brother-in-law of complainant, it seems to have come on record that hotel run by accused is a small hotel and that complainant is periodically in need of financial helps. Therefore, with such material coming from the mouth of complainant's own witness, it is clear that, financial position of complainant does not seem to be so sound, so as to invest Rs.10,00,000/-. Moreover, complainant has not placed any document to show investment of Rs.10,00,000/-. Surprisingly, he has not obtained any receipt immediately also.

6. It is settled position that, when complainant fails to demonstrate his financial capacity to extend financial help, his case requires strict scrutiny. Unless there is sufficient evidence supporting his financial source to lend huge money, complaint cannot straightway accepted without corroborative evidence. Here, there is no corroborative evidence to the case set up by complainant. Moreover, his own witness has exposed his financial condition and therefore view taken by learned trial court cannot be faulted at. No good ground is made out so as to permit for questioning the judgment by granting leave. Hence, I proceed to

pass the following order:-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)

Tandale